

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0026**

**Use Tax – Packaging Supplies  
For Tax Years 1996 through 1998**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**Use Tax— Packaging Supplies**

**Authority:** IC 6-2.5-3-2; IC 6-2.5-3-4(a)(2); IC 6-2.5-5-9(d)  
45 IAC 2.2-5-16(d)(1)  
Sales Tax Information Bulletin #44

Taxpayer protests the imposition of use tax on packaging supplies.

**STATEMENT OF FACTS**

Taxpayer is a Minnesota corporation that manufactures and sells cabinets for use in the kitchen, laundry, and bathroom. Taxpayer sells the manufactured cabinets wholesale to retailers. When taxpayer ships the cabinets to its customers, it hand loads the cabinets onto semi-trailers in rows stacked close to the ceiling and walls. Airbags are placed between the product and the trailer ceiling and walls and inflated. The airbags compression fit the row of cabinets to prevent the cabinets from moving during their transportation. Once the cabinets reach their destination, the airbags are sliced open. This renders the airbags useless after one time of use. After the airbags are deflated, they are discarded.

The Department of Revenue conducted an audit for the years in question, and issued use tax assessments on taxpayer's use of the airbags. Although taxpayer wrote a letter to the Department protesting the proposed assessments, taxpayer failed to respond to the Department's letter of March 5, 2001, which requested that taxpayer schedule an administrative hearing with the Department. Using the best information available, efforts were made to contact taxpayer and taxpayer failed to respond. The Department issues this Letter of Finding based on its best understanding of the facts as provided by the auditor and the taxpayer's protest letter.

**Use Tax— Packaging Supplies**

**DISCUSSION**

IC 6-2.5-3-2 imposes "[a]n excise tax, known as the use tax, . . . on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction . . . ." An exemption to this use tax is provided by IC 6-2.5-3-4(a)(2) if: "the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of IC 6-2.5-5, . . . and the property is being used, stored, or consumed for the purpose for which it was exempted."

At issue here are nonreturnable packaging materials used to transport the cabinets manufactured by taxpayer. In its protest letter, taxpayer protests use tax assessed on its purchases of nonreturnable packaging supplies, *i.e.*, airbags, used to secure the product during shipping.

The taxpayer cites Sales Tax Information Bulletin #44 as providing exemption for the protested items. However, the bulletin pertains only to containers and wrapping materials used by the purchaser as follows: the purchaser must add contents to the containers purchased; and, the purchasers must sell the contents added.

In this case, the taxpayer purchases airbags and uses them to secure the cabinets as they are transported to customers. No product is added to the airbags. According to IC 6-2.5-5-9(d), 45 IAC 2.2-5-16(d)(1), and Information Bulletin #44 the exemption is for nonreturnable wrapping material and empty containers to be used by the purchaser as enclosures or containers for selling contents sold in a sale constituting selling at retail. Taxpayer's airbags are not considered by the Department to constitute wrapping materials nor are they empty containers to be used as enclosures or containers. The airbags merely facilitate shipping.

**FINDING**

Taxpayer's protest is denied.